

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1264 be amended to read as follows:

- 1 Page 3, between lines 18 and 19, begin a new paragraph and insert:
2 "SECTION 3. IC 9-30-5-3, AS AMENDED BY P.L.291-2001,
3 SECTION 222, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2004]: Sec. 3. A person who violates section 1 or 2 of this
5 chapter commits a Class D felony if:
6 (1) the person has a previous conviction of operating while
7 intoxicated ~~and~~
8 ~~(2) the previous conviction of operating while intoxicated that~~
9 occurred within the five (5) years immediately preceding the
10 occurrence of the violation of section 1 or 2 of this chapter; ~~or~~
11 **(2) the person:**
12 **(A) is at least twenty-one (21) years of age;**
13 **(B) violates section 1(b) or 2(b) of this chapter; and**
14 **(C) operated a vehicle in which at least one (1)**
15 **passenger was less than eighteen (18) years of age."**
16 Page 3, between lines 33 and 34, begin a new paragraph and insert:
17 "SECTION 5. IC 9-30-5-10 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) In addition to a
19 criminal penalty imposed for an offense under this chapter or
20 IC 14-15-8, the court shall, after reviewing the person's bureau driving
21 record and other relevant evidence, recommend the suspension of the
22 person's driving privileges for the fixed period of time specified under
23 this section.
24 (b) If the court finds that the person:
25 (1) does not have a previous conviction of operating a vehicle or
26 a motorboat while intoxicated; or
27 (2) has a previous conviction of operating a vehicle or a
28 motorboat while intoxicated that occurred at least ten (10) years
29 before the conviction under consideration by the court;
30 the court shall recommend the suspension of the person's driving
31 privileges for at least ninety (90) days but not more than two (2) years.

1 (c) If the court finds that the person has a previous conviction of
2 operating a vehicle or a motorboat while intoxicated and the previous
3 conviction occurred more than five (5) years but less than ten (10)
4 years before the conviction under consideration by the court, the court
5 shall recommend the suspension of the person's driving privileges for
6 at least one hundred eighty (180) days but not more than two (2) years.
7 The court may stay the execution of that part of the suspension that
8 exceeds the minimum period of suspension and grant the person
9 probationary driving privileges for a period of time equal to the length
10 of the stay. If the court grants probationary driving privileges under this
11 subsection, the court may order that the probationary driving privileges
12 include the requirement that the person may not operate a motor vehicle
13 unless the motor vehicle is equipped with a functioning certified ignition
14 interlock device under IC 9-30-8.

15 (d) If the court finds that the person has a previous conviction of
16 operating a vehicle or a motorboat while intoxicated and the previous
17 conviction occurred less than five (5) years before the conviction under
18 consideration by the court, the court shall recommend the suspension
19 of the person's driving privileges for at least one (1) year but not more
20 than two (2) years. ~~The court may stay the execution of that part of the~~
21 ~~suspension that exceeds the minimum period of suspension and grant~~
22 ~~the person probationary driving privileges for a period of time equal to~~
23 ~~the length of the stay. If the court grants probationary driving privileges~~
24 ~~under this subsection, the court may order that the probationary driving~~
25 ~~privileges include the requirement that the person may not operate a~~
26 ~~motor vehicle unless the motor vehicle is equipped with a functioning~~
27 ~~certified ignition interlock device under IC 9-30-8.~~

28 (e) **If the conviction under consideration by the court is for an**
29 **offense under section 1(b) of this chapter, the court shall**
30 **recommend the suspension of the person's driving privileges for**
31 **at least one hundred eighty (180) days but not more than two (2)**
32 **years.**

33 (f) **If:**

- 34 (1) **the conviction under consideration by the court is for an**
35 **offense under section 1(a), 1(c), or 2(a) of this chapter; and**
36 (2) **the court determines that the person was at least**
37 **twenty-one (21) years of age and operated a vehicle in which**
38 **at least one (1) passenger was less than eighteen (18) years**
39 **of age;**

40 **the court shall recommend the suspension of the person's driving**
41 **privileges for at least one hundred eighty (180) days but not more**
42 **than two (2) years.**

43 (g) **If:**

- 44 (1) **the conviction under consideration by the court is for an**
45 **offense under section 1(b) or 2(b) of this chapter; and**
46 (2) **the court determines that the person was at least**
47 **twenty-one (21) years of age and operated a vehicle in which**
48 **at least one (1) passenger was less than eighteen (18) years**
49 **of age;**

1 **the court shall recommend the suspension of the person's driving**
 2 **privileges for at least one (1) year but not more than two (2)**
 3 **years.**

4 (h) If the conviction under consideration by the court is for an
 5 offense under:

- 6 (1) section 4 of this chapter;
- 7 (2) section 5 of this chapter;
- 8 (3) IC 14-15-8-8(b); or
- 9 (4) IC 14-15-8-8(c);

10 the court shall recommend the suspension of the person's driving
 11 privileges for at least two (2) years but not more than five (5) years.

12 ~~(f)~~ (i) If the conviction under consideration by the court is for an
 13 offense involving the use of a controlled substance listed in schedule I,
 14 II, III, IV, or V of IC 35-48-2, **in which a vehicle was used in the**
 15 **offense**, the court shall recommend the suspension or revocation of the
 16 person's driving privileges for at least six (6) months.

17 SECTION 6. IC 9-30-5-12 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) If:

- 19 (1) a court recommends suspension of a person's driving
- 20 privileges under section 10(b) of this chapter for an offense
- 21 committed under this chapter; and
- 22 (2) the person did not refuse to submit to a chemical test offered
- 23 under IC 9-30-6-2 during the investigation of the offense;

24 the court may stay the execution of the suspension of the person's
 25 driving privileges and grant the person probationary driving privileges
 26 for one hundred eighty (180) days.

27 (b) An order for probationary privileges must be issued in
 28 accordance with sections 11 and 13 of this chapter.

29 (c) If:

- 30 (1) a court recommends suspension of a person's driving
- 31 privileges under section 10(c) ~~10(d)~~, or ~~10(e)~~, **10(h)** of this
- 32 chapter for an offense committed under this chapter; and
- 33 (2) the period of suspension recommended by the court exceeds
- 34 the minimum permissible fixed period of suspension specified
- 35 under section 10 of this chapter;

36 the court may stay the execution of that part of the suspension that
 37 exceeds the minimum fixed period of suspension and grant the person
 38 probationary driving privileges for a period of time equal to the length
 39 of the stay.

40 (d) In addition to the other requirements of this section, if a
 41 person's driving privileges are suspended or revoked under section ~~10(f)~~
 42 **10(i)** of this chapter, a court must find that compelling circumstances
 43 warrant the issuance of probationary driving privileges.

44 (e) Before a court may grant probationary driving privileges under
 45 this section, the person to whom the probationary driving privileges will
 46 be granted must meet the burden of proving eligibility to receive
 47 probationary driving privileges."

48 Page 4, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 8. IC 9-30-5-15, AS AMENDED BY P.L.32-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter the court shall:

(1) order:

(A) that the person be imprisoned for at least five (5) days;

~~or and~~

(B) **that** the person ~~to~~ perform at least thirty (30) days of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug ~~abuse treatment~~ program; ~~including an alcohol deterrent program if the person suffers from alcohol abuse;~~

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least ~~ten (10)~~ **thirty (30)** days; or

(B) the person to perform at least sixty (60) days of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug ~~abuse treatment~~ program; ~~including an alcohol deterrent program if the person suffers from alcohol abuse;~~

if the person has at least two (2) previous convictions of operating while intoxicated.

(c) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order that the person be imprisoned for at least three (3) days; and

(2) order the person to:

(A) receive an assessment of the person's degree of alcohol and drug abuse; and

(B) if appropriate, successfully complete an alcohol or drug program;

if the person is convicted of an offense under section 1(b) of this chapter.

(d) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order that the person be imprisoned for at least three (3) days; and

(2) order the person to:

(A) receive an assessment of the person's degree of alcohol and drug abuse; and

1 **(B) if appropriate, successfully complete an alcohol or**
 2 **drug program;**

3 **if the person is at least twenty-one (21) years of age and is**
 4 **convicted of an offense under section 1(a), 1(c), or 2 of this**
 5 **chapter in which at least one (1) passenger was less than eighteen**
 6 **(18) years of age.**

7 **(e) In addition to any criminal penalty imposed for an offense**
 8 **under this chapter, the court shall order the person to:**

9 **(1) receive an assessment of the person's degree of alcohol**
 10 **and drug abuse; and**

11 **(2) if appropriate, successfully complete an alcohol or drug**
 12 **program;**

13 **if the person is convicted of an offense under section 4 or 5 of this**
 14 **chapter.**

15 **(f) An assessment for alcohol and drug abuse required under**
 16 **this section must be conducted by:**

17 **(1) a court established alcohol and drug services program**
 18 **certified under IC 12-23-14;**

19 **(2) a circuit court alcohol abuse deterrent program**
 20 **established under IC 9-30-9; or**

21 **(3) a drug court certified under IC 12-23-14.5.**

22 **In a county that does not have a program described in subdivision**
 23 **(1), (2), or (3), the assessment must be conducted by an addiction**
 24 **services treatment provider certified by the division of mental**
 25 **health and addiction under IC 12-23.**

26 **(g) A court ordering a person to complete an alcohol or drug**
 27 **program under this section must determine that the program is:**

28 **(1) certified under IC 12-23-14 or IC 12-23-14.5; or**

29 **(2) authorized under IC 9-30-9.**

30 **In a county that does not have a program described in subdivision**
 31 **(1) or (2), the program must be conducted by an addiction services**
 32 **treatment provider certified by the division of mental health and**
 33 **addiction under IC 12-23.**

34 ~~(e)~~ **(h) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a**
 35 **sentence imposed under this section may not be suspended. The court**
 36 **may require that the person serve the term of imprisonment in an**
 37 **appropriate facility at whatever time or intervals (consecutive or**
 38 **intermittent) determined appropriate by the court. However:**

39 **(1) at least forty-eight (48) hours of the sentence must be served**
 40 **consecutively; and**

41 **(2) the entire sentence a term of:**

42 **(A) imprisonment;**

43 **(B) community restitution or service; or**

44 **(C) both imprisonment and community restitution or**
 45 **service;**

46 **imposed under this section must be served within six (6)**

months after the date of sentencing.

~~(d)~~ (i) Notwithstanding IC 35-50-6, a person does not earn credit time while serving a sentence imposed under this section."

Page 12, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 22. IC 9-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If it appears from the records maintained in the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

(1) **except as provided in subdivision (2)**, ten (10) years if the person is a habitual violator under section 4(a) of this chapter;

(2) **life if the person is a habitual violator under section 4(a) of this chapter and has at least two (2) violations under section 4(a)(4) through 4(a)(7) of this chapter;**

(3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or

~~(3)~~ (4) five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial review of the person's suspension under this chapter."

Page 13, after line 19, begin a new paragraph and insert:

"SECTION 25. IC 35-48-4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) If a person is convicted of an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, or conspiracy to commit an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, **and the court finds that a motor vehicle was used in the commission of the offense**, the court shall, in addition to any other order the court enters, order that the person's:

(1) operator's license be suspended;

(2) existing motor vehicle registrations be suspended; and

(3) ability to register motor vehicles be suspended;

by the bureau of motor vehicles for a period specified by the court of at least six (6) months but not more than two (2) years.

(b) If a person is convicted of an offense described in subsection (a) and the person does not hold an operator's license or a learner's permit, the court shall order that the person may not receive an operator's license or a learner's permit from the bureau of motor vehicles for a period of not less than six (6) months.

SECTION 26. IC 35-50-2-2, AS AMENDED BY P.L.224-2003, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any part of a

1 sentence for a felony, except as provided in this section or in section
2 2.1 of this chapter.

3 (b) With respect to the following crimes listed in this subsection,
4 the court may suspend only that part of the sentence that is in excess
5 of the minimum sentence, unless the court has approved placement of
6 the offender in a forensic diversion program under IC 11-12-3.5:

7 (1) The crime committed was a Class A or Class B felony and
8 the person has a prior unrelated felony conviction.

9 (2) The crime committed was a Class C felony and less than
10 seven (7) years have elapsed between the date the person was
11 discharged from probation, imprisonment, or parole, whichever
12 is later, for a prior unrelated felony conviction and the date the
13 person committed the Class C felony for which the person is
14 being sentenced.

15 (3) The crime committed was a Class D felony and less than
16 three (3) years have elapsed between the date the person was
17 discharged from probation, imprisonment, or parole, whichever
18 is later, for a prior unrelated felony conviction and the date the
19 person committed the Class D felony for which the person is
20 being sentenced. However, the court may suspend the minimum
21 sentence for the crime only if the court orders home detention
22 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
23 sentence specified for the crime under this chapter.

24 (4) The felony committed was:

25 (A) murder (IC 35-42-1-1);

26 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
27 causing death;

28 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

29 (D) kidnapping (IC 35-42-3-2);

30 (E) confinement (IC 35-42-3-3) with a deadly weapon;

31 (F) rape (IC 35-42-4-1) as a Class A felony;

32 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
33 felony;

34 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
35 felony;

36 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury
37 or with a deadly weapon;

38 (J) arson (IC 35-43-1-1) for hire or resulting in serious
39 bodily injury;

40 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
41 or with a deadly weapon;

42 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
43 weapon;

44 (M) escape (IC 35-44-3-5) with a deadly weapon;

45 (N) rioting (IC 35-45-1-2) with a deadly weapon;

46 (O) dealing in cocaine, a narcotic drug, or methamphetamine
47 (IC 35-48-4-1) if the court finds the person possessed a
48 firearm (as defined in IC 35-47-1-5) at the time of the
49 offense, or the person delivered or intended to deliver to a

person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; ~~or~~

(R) an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death) if the person had:

- (i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or**
- (ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or**

(S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or

1 IC 35-47-10-7 may not be suspended if the commission of the offense
2 was knowing or intentional.

3 (h) A term of imprisonment imposed for an offense under
4 IC 35-48-4-6(b)(1)(B) may not be suspended.

5 SECTION 27. [EFFECTIVE JULY 1, 2004] **(a) IC 9-30-5-3, as**
6 **amended by this act, applies only to offenses committed after**
7 **June 30, 2004.**

8 **(b) IC 9-30-5-10, IC 9-30-5-15, IC 9-30-10-5, and**
9 **IC 35-50-2-2, all as amended by this act, apply only if the last**
10 **offense was committed after June 30, 2004."**

11 Renumber all SECTIONS consecutively.

(Reference is to EHB 1264 as printed February 20, 2004.)

Senator YOUNG R MICHAEL